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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Lawyers' Rights Watch Canada, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Colombia: Failure to fulfill duties in response to attacks on lawyers

LRWC calls on the Human Rights Council to fulfill its duty to promote and protect the rule of law and fundamental rights and freedoms in Colombia by calling on Colombia to act urgently to:

- Prevent and address the conditions leading to murders and attacks on the personal and professional safety of lawyers working in Cali and the Valle del Cauca Department (Valle del Cauca Department); and
- Ensure criminal accountability for perpetrators of murders, threats and attacks.

I. Background

The UN Special Rapporteur on the Independence of Judges and Lawyers reported in 2010 that more than 300 judicial system actors had been killed in Colombia in the previous 15 years.[1] She referenced the fact that by the National Police's own count, between the years 2003 through 2009, one magistrate, six judges, 12 prosecutors and 334 lawyers were killed.[2] According to civil society groups in Colombia, approximately 700 lawyers have been killed over the ten year period up to 2013.[3] As the Special Rapporteur observed, also gravely concerning is the impunity associated with these cases. The majority of cases have not been adequately investigated and even fewer have resulted in criminal sanctions, a situation which itself contributes to maintaining impunity.[4]

The situation of the legal profession in the Valle del Cauca Department is particularly serious. Since the bombing of the Palacio de Justicia in Cali in 2008, which had profoundly adverse effects on the administration of justice, killings and attacks in the region have increased. In the first 10 months of 2013, 11 of 15 reported murders of Colombian lawyers occurred in the Valle del Cauca Department. [5]The data regarding the attacks and killing of lawyers is supported by reports in the press and reports by Lawyers Without Borders Canada, the Colombia Caravana UK Lawyers Group[6] and the Society of Litigating Lawyers in Cali[7] (SLLC). SLLC reports that in 2013 at least twelve lawyers in the Valle del Cauca were murdered, and the actual numbers are likely higher.

Lawyers reportedly murdered in the Valle del Cauca Department during 2013 were:

1. Eduardo Antonio Almario Martinez, Cali – Valle, January 25, 2013
2. Daniel Alejandro Almario Calderon, Cali – Valle, January 25, 2013

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[1] Informe de la Relatora Especial sobre la independencia de los magistrados y abogados, Sra. Gabriela Carina Knaul de Albuquerque e Silva, Misión a Colombia, 16 de Abril 2014, A/HRC/14/26/Add.2: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/14/26/Add.2&Lang=S [accessed on 10 May 2014] at para. 53.

[2] Ibid.

[3] Bar Human Rights Committee of England and Wales (BHRC), Declaración Publica: El BHRC expresa preocupación por la muerte de otro abogado en Colombia [BHRC expresses concern about the death of another lawyer in Colombia], April 8, 2013: https://www.barhumanrights.org.uk/sites/default/files/documents/news/bhrc_declaracion_publica_8th_april_0.pdf [accessed on 10 May 2014], at p. 1.

[4] Ibid.

[5] Between January and November 2013, the Colombian Caravana UK Lawyers Group, recorded 15 deaths, including 11 in Valle del Cauca.

[6] See their website at: http://www.colombiancaravana.org.uk.

[7] By its Spanish name, SLLC is Colegiatura de Abogados Litigantes La Fuerza del Derecho.

3. Jorge Ivan Gomez Guerrero (or Guevara),[8] Cali – Valle, February 28, 2013
4. Jhony Alberto Balarezo Ortiz, Florida – Valle, March 1, 2013
5. Diego Luis Garcia Gonzalez, Cali – Valle, March 21, 2013[9]
6. Alberto Arias Escobar, Valle del Cauca, April 30, 2013
7. Andrés Felipe Parra Utima, Cali, June 23, 2013
8. Fabio Molina Velasquez, Cali – Valle, July 13, 2013
9. Jose Gerley Sanchez Benitez, Cali - Valle, July 16, 2013
10. Juan Carlos Canizalez Campo, Buga, August 12, 2013
11. Carlos Alberto Nuñez, Cali, October 5, 2013
12. Octavio Quinchia Grisales, Risaralda, 23 November 23, 2013[10]

Victim, Jose Gerley Sanchez Benitez, is described by a Colombian news source as the tenth lawyer in the Valle del Cauca Department to be killed in 2013.[11] SLLC spokesperson, Alejandro Arenas, indicated that Colombia had not responded adequately to the many petitions calling on authorities to take all necessary measures to protect lawyers in the exercise of their profession. Following the murder of lawyer Fabio Molina Velasquez three days earlier, Arenas had called on the state to investigate all murders of lawyers in 2013 and past years, to ensure justice and end impunity.[12]

LRWC is aware of only one of the Valle del Cauca Department murders cited above where an investigation has reached the stage where two alleged perpetrators have been captured, namely in the death of Jorge Ivan Gomez Guerrero/Guevara.

Threats and Harassment

Threats against lawyers in the Valle del Cauca Department from the "Los Rastrojos" paramilitary group [13] and other sources also increased during 2013.[14] LRWC has also reviewed documentation of threats and harassment against lawyers working with the Corporación Justicia y Dignidad (CJD), extending back to 2009-2010. The Cali-based CJD represents victims of torture, extrajudicial executions and forced displacement. The said documentation reviewed demonstrates a persistent pattern of threats, harassment, and surveillance against CJD members, extending back to March 2009.

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[8] There is some confusion about whether the surname of this victim, reported to have practiced criminal law, is Guerrero or Guevara.

[9] The BHRC declaration refers to the murder of Diego Garcia, supra note 4 at p. 1.

[10] The victim was tortured and killed. His entire family was subsequently forced to leave the country due to death threats: http://www.rcnradio.com/noticias/familia-completa-abandono-el-pais-desplazados-por-violentos-112085 [accessed May 16, 2014].

[11] "Asesinan a abogado en su vivienda del barrio Los Andes, norte de Cali", El Pais, 17 de julio 2013, http://www.elpais.com.co/elpais/judicial/noticias/asesinan-abogado-barrio-andes-cali [accessed May 16, 2014] [hereafter "*Asesinan a abogado de Cali*"].

[12] In a separate article published on July 16, 2013, Mr. Arenas commented on the murder of lawyer, Fabio Molina Velasquez. Arenas emphasized how vulnerable lawyers are in the Valle del Cauca department, referring to the fact that the Day of the Lawyer was being celebrated that week: "Ya son nueve los abogados asesinados en el Valle en lo corrido del 2013" ["There are already nine lawyers killed in the Valley to date in 2013"], El Pais, 16 de julio 2013, http://www.elpais.com.co/elpais/judicial/noticias/ya-son-nueve-abogados-asesinados-valle-corrido-2013 [accessed May 16, 2014]. The Spanish text reads: *Alejandro Arenas, decano de la Colegiatura de Abogados Litigantes del Valle, ayer lamentó el asesinato de Fabio, porque "queda demostrado lo vulnerables que estamos en este momento los abogados en el departamento del Valle". Por eso, la semana pasada, en plena celebración del Día del Abogado, Arenas aprovechó para pedirle al Estado que se investigue a fondo cada uno de los homicidios de personas del gremio, tanto los de este año como los pasados, "para que ninguno quede en la impunidad y se haga justicia", indicó.*

[13] The increase in threats originating from this group and directed towards lawyers and other human rights defenders was a phenomenon observed throughout Colombia in 2013.

[14] Several illustrations are contained in the following letters of the Colombian Caravana UK Lawyers Group: http://www.colombiancaravana.org.uk/wp-content/uploads/2013/05/Garzon-Letter-threats-Sept-2013-FINAL-English.pdf; http://www.colombiancaravana.org.uk/wp-content/uploads/2013/04/Death-threats-CAJAR-Aug-15-Eng-Final.pdf [accessed May 20, 2014].

Colombian State's Response

Lawyers in the Valle del Cauca Department have sought remedies from Colombian authorities by petitioning the President and the Ministry of Justice, to no avail. The SLLC has, over the past nine years documented the murders of lawyers, lodged petitions with the President and Minister of Justice, and called for protective measures for lawyers. The intellectual authors of these cases have not been prosecuted or convicted; prosecutions commenced were concluded without resolution because of the lack of investigation; complaints filed with the General Prosecutor (Fiscalía General) have been received and archived; and protective measures have not been provided to lawyers.

II Legal Framework

The persistent patterns of attacks, threats, harassment and killings to which lawyers are subjected have grave implications for Colombia and the administration of justice. The state is also implicated in a number of significant respects, both in relation to its omissions as well as its actions.

The essential role that lawyers play in facilitating access to justice, guaranteeing respect for protected rights, combating impunity and ensuring the rule of law, is well established in international human rights law, and the States' obligations flow from this principle.[15] Colombia is legally obligated to take all measures necessary to ensure both accountability for perpetrators and effective protection for lawyers. The Colombian authorities are required to investigate these killings and threats with due diligence and make all possible efforts in order to assure an effective investigation so as to bring to justice the material and intellectual authors of these crimes.

Colombia has failed to fulfill its obligations to take reasonable steps to prevent such attacks in by failing to: (a) adopt effective measures to protect the lives of lawyers; and (b) ensure accountability through investigation and prosecutions. As a State party to the *International Convention on Civil and Political Rights* (*ICCPR*), Colombia has a legal duty to ensure the right to life of all persons and take measures to effectively prevent and punish violations. The duty to specifically protect the lives and the personal and professional safety of lawyers is integral to Colombia's duty under the *ICCPR* to ensure that all persons have effective access to legal services and to justice.
The United Nations Human Rights Committee (HR Committee), in a case involving a lawyer in Colombia, concluded that the state's failure to investigate reported threats and to investigate his death and determine who was responsible for the murder was itself a violation of the state's obligation to protect the victim's right to life, pursuant to Article 6(1) of the *ICCPR*.[16]

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[15] As an illustration, see: European Parliament, Resolution on the legal professions and the general interest in the functioning of legal systems, 23 March 2006, P6_TA(2006) 0108, at para 1, cited in ICJ, *Legal Commentary to the ICJ Geneva Declaration Upholding the rule of Law and the Role of Judges and Lawyers in Times of Crisis*, Human Rights and Rule of Law Series no 3, p. 113; http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2011/05/ICJgenevadeclaration-publication-2011.pdf. That body has underscored this foundational principle, recognizing the crucial role of an independent legal profession in guaranteeing respect for fundamental rights in a democratic society.

[16] UN Human Rights Committee, *Communication No 859/1999: Colombia,* 15 April 2002, CCPR/C/74/D/859/1999 (Jurisprudence), *at* § 7.3 available at : http://www.unhchr.ch/tbs/doc.nsf/0/b8708c80eebeec9ec1256c1b004c520f?Opendocument: "*With regard to the author's claim that article 6, paragraph 1, was violated insofar as the very fact that an attempt was made on his life is a violation of the right to life and the right not to be arbitrarily deprived of life, the Committee points out that article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction. In the case in question, the State party has not denied the author's claims that the threats and harassment which led to an attempt on his life were carried out by agents of the State, nor has it investigated who was responsible. In the light of the circumstances of the case, the Committee considers that there has been a violation of article 6, paragraph 1, of the Covenant*". (emphasis added)

The UN *Basic Principles on the Role of Lawyers*[17] (*Basic Principles*) which elaborate on the duty of states to effectively protect the safety of lawyers directs states to ensure that, "where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities".[18]

The *Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* (Geneva Declaration)[19] is especially salient for Colombia in establishing under Principle 7 "enhanced responsibilities" for states to safeguard the security of lawyers and to provide: "all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation… as a consequence of their professional functions or legitimate exercises of human rights".[20]

The Colombian state has breached these international standards and affirmative duties through its failure to take even elementary steps towards the investigation and prosecution of these serious crimes.

III. Conclusion

The United Nations Human Rights Council is mandated to promote and protect human rights by, *inter alia*, preventing violations, removing obstacles to enforcement, engaging states in dialogue, and making recommendations for the protection of human rights.[21]

LRWC calls on Council to:

1. Affirm Colombia's twin duties to provide adequate protection for the rights to life and the personal and professional safety of lawyers, and to ensure that the perpetrators of violations are held accountable through thorough adequate investigations and timely prosecutions;

2. Request Colombia to provide protection for lawyers in the Valle del Cauca Department and to ensure the appropriate civil and criminal remedies of the murders cited.

3. Ascertain obstacles to these goals through ongoing dialogue

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[17] OHCHR, *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990, U.N. Doc. A/CONF.144/28/Rev.1, available at: http://www2.ohchr.org/english/law/lawyers.htm [*Basic Principles*].

[18] *Ibid*, at Principle 17.

[19] The International Commission of Jurists, *Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* Geneva Declaration is an instrument adopted by the World Congress of that influential international body of jurists which is dedicated to ensuring respect for international human rights standards through the law. Information about the International Commission of Jurists available at: http://www.icj.org/.

[20] The full script of Principle 7 of the *Geneva Declaration* reads: *Since the protection of human rights may be precarious in times of crisis, lawyers should assume enhanced responsibilities both in protecting the rights of their clients and in promoting the cause of justice and the defence of human rights. All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, de facto or de iure discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions. The authorities must desist from and protect against all such adverse actions. Lawyers must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a consequence of their association with disfavoured or unpopular causes or clients.* See also the UN Commission on Human Rights, *Independence and Impartiality of the judiciary, jurors and assessors and the independence of lawyers*, 19 April 2004, UN Doc. E/CN.4/RES/2004/33, which established the requirement that states must adopt effective measures, including legislation and enforcement to enable lawyers to perform their duties without harassment or intimidation.

[21] General Assembly Res. A/RES/48/141 20 Dec. 1993, articles 3 (a), (f), (g) and General Assembly Res.A/RES/60/251, 3 Apr. 2006, art. 5(i).